

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

STATE OF TEXAS, ET AL

VS.

UNITED STATES OF AMERICA, ET AL

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)  
) CIVIL ACTION NO.  
) B-14-254  
)  
)  
)

MOTION HEARING  
BEFORE THE HONORABLE ANDREW S. HANEN  
JUNE 23, 2015

APPEARANCES:

For the Plaintiffs:

MS. ANGELA V. COLMENERO  
MR. ADAM NICHOLAS BITTER  
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P.O. Box 12548  
Austin, Texas 78711

For the Defendants:

MS. JENNIFER D. RICKETTS  
MR. DANIEL SCHWEI  
US Department of Justice  
Civil Division  
20 Massachusetts Ave., NW  
Washington, D.C. 20001

ALSO PRESENT: Ur Jaddou, Agency Counsel

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1 THE COURT: All right. Be seated.

2 Okay. We're here in B-14-254, State of Texas, et al versus  
3 the United States, et al.

4 Ms. Colmenero, who is accompanying you today?

5 MS. COLMENERO: I'm joined here today by Adam Bitter,  
6 who is also an attorney with the Texas Attorney General's  
7 office.

8 THE COURT: Okay. I was going to call on Mr. Hu because  
9 he's the face I recognize.

10 MR. HU: I'll be happy to introduce everyone at the  
11 table. They're going to be doing all the talking.

12 THE COURT: All right.

13 MR. HU: I have Jennifer Ricketts from the Department of  
14 Justice in Washington and Daniel Schwei from DOJ. And Ur Jaddou  
15 from agency counsel.

16 THE COURT: Okay.

17 MS. RICKETTS: And, Your Honor, with your permission,  
18 Mr. Schwei and I would like to share the podium. We would  
19 divide it up so that I would handle any questions related to the  
20 April 7th order. He would handle --

21 THE COURT: Well, the only thing you need to do in  
22 sharing the podium is to make sure you're always in front of a  
23 microphone or you'll get the wrath of my court reporter.

24 MS. RICKETTS: Will do, Your Honor.

25 THE COURT: All right. Let me start off by saying or by

1 asking, I guess really, have y'all gotten together, I hope, and  
2 talked about how we can resolve any -- and I guess what I'll  
3 call it -- remedial action? What can we do to get this behind  
4 us?

5 MS. COLMENERO: Yes, Your Honor, we have. And the  
6 meet-and-confer process was initiated the beginning of June.  
7 We've had two meet and confers thus far. And really the focus  
8 of the meet and confers has been related to the 2,000 work  
9 authorization documents that were issued after the Court's  
10 February 16th injunction, and so the parties have been  
11 discussing an exchange of information that would better aid the  
12 plaintiff states in determining whether they need to proceed  
13 forward with any corrective action orders.

14 And we've requested kind of a list of information that we  
15 think is pertinent to our inquiries in terms of whether or not  
16 we need to undertake any corrective action orders within our own  
17 respective states, and the Department of Justice and the other  
18 defendants have provided us with some limited information.

19 And most recently as of Friday, the information that they've  
20 provided out of the 2,000 post-injunction grants that were  
21 issued, it appears that 814 of those were -- came from or were  
22 individuals who resided in the plaintiff states, and so they've  
23 provided us with a tally of where those individuals reside. And  
24 specifically just for the State of Texas, they have provided us  
25 with the number of queries that have been run on the SAVE

1 database.

2 THE COURT: Tell me what that means.

3 MS. COLMENERO: So whenever an individual comes to a  
4 Texas driver's license facility, in order to confirm that they  
5 are, in fact, an individual who is lawfully present here in the  
6 United States, we've run the work authorization ID number  
7 through the SAVE database which verifies that that individual  
8 does, in fact, have lawful presence here. And so the Department  
9 of Justice has provided us only for the State of Texas the  
10 number of inquiries that were run on the SAVE database for  
11 individuals who are part of this group of 2,000 from the  
12 February 6th date I believe through mid June, if that's correct.

13 And so we've only gotten that information just for the State  
14 of Texas. We've expressed that we believe -- on our last meet  
15 and confer that while we appreciate that information, it is kind  
16 of an initial first step, and we think it's useful, it obviously  
17 doesn't translate over to the other plaintiff states, and we  
18 would want that same information for them.

19 And in addition to the information that they provided us, we  
20 have also requested information related to the return of the  
21 three-year work authorization documents. They've identified in  
22 their latest filings that they've taken some corrective action  
23 orders on their own end which include asking for the return of  
24 those documents as well as transferring the three-year grants to  
25 two-year grants.

1           And so we've asked for information related to when the  
2           request to return the documents was made, and if, in fact, those  
3           documents have, in fact, been returned to the federal agency.  
4           And we haven't received that information, but we're in the  
5           meet-and-confer process, and there has been an initial exchange  
6           of some information. It's just been very limited.

7           THE COURT: All right. Mr. Schwei, did you want to  
8           weigh in?

9           MR. SCHWEI: Yes. Thank you, Your Honor. With respect  
10          to the letter that was sent to the plaintiffs on Friday, I have  
11          copies of that four-page letter here. It's rather detailed in  
12          the amount of information that it provides. We'd be happy to  
13          provide Your Honor with a copy of that letter if Your Honor  
14          would like one.

15          I think from our perspective, the meet-and-confer process  
16          has been a productive one. We have met two times and provided  
17          the plaintiffs with some of their requested information and are  
18          continuing to look on our end whether additional information may  
19          be possible. I think our -- our position would be that the  
20          meet-and-confer process should continue going forward and that  
21          the next step, what the plaintiffs have said to us in some of  
22          our conversations, is that they would like to do a, quote,  
23          phased approach where they review the information that we've  
24          been -- that we provide to them, and they would determine  
25          whether any additional information is necessary.

1           So we believe the next step would be to hear back from the  
2       plaintiffs precisely what information they are requesting, and  
3       the parties could continue that meet-and-confer process. But  
4       overall we think it has been a productive one and would request  
5       that the parties be allowed to continue that process.

6           THE COURT: Who are the recipients, if you can  
7       categorize them. There may not be a way to categorize them, but  
8       who are the recipients of the 2,000 work authorizations after  
9       the injunction?

10          MR. SCHWEI: All of those individuals were individuals  
11       eligible under the 2012 Deferred Action for Childhood Arrivals,  
12       the 2012 DACA.

13          THE COURT: So they either were or could have been, for  
14       lack of a better term, DACA eligible recipients?

15          MR. SCHWEI: With re -- they were eligible under the  
16       2012 DACA recipient or under the 2012 guidelines. So all of the  
17       individuals were correctly eligible for two-year terms but  
18       mistakenly were granted three-year terms. And so the corrective  
19       actions that the agency has been taking are con -- are designed  
20       to convert the three-year terms to two-year terms.

21          THE COURT: Okay.

22          MR. SCHWEI: All of the individuals were eligible under  
23       the original 2012 DACA guidelines.

24          THE COURT: All right. Ms. Colmenero, do you see any  
25       problem as long as both sides are making progress? I don't

1 necessarily think that the Court needs to weigh in on a process  
2 that's actually perhaps resolving itself.

3 MS. COLMENERO: And --

4 THE COURT: Not that it's resolving itself. You guys  
5 are working on it, but --

6 MS. COLMENERO: And that's what I just wanted to  
7 reiterate, is that we are, in fact, working with the defendants  
8 on this issue, and we did -- and we did, in fact, suggest that  
9 it would be done -- it made the most sense for it to be done in  
10 a phased approach for us to see what information could be  
11 provided to us and whether or not it, in fact, is useful.

12 And I expect in the next meet and confer for us to, you  
13 know, request some more information because the limited  
14 information that we do have and has been provided to us, it  
15 is -- while it is useful in a very limited respect, I think some  
16 additional information is warranted. And so if the parties can  
17 continue to have these productive conversations, we are hopeful  
18 that perhaps we might be able to reach a resolution and finally  
19 find some information that the plaintiff states can use in terms  
20 of determining the extent of the injuries that they may have  
21 suffered with these post-injunction grants and work  
22 authorizations.

23 THE COURT: Okay. All right. Is there any feel for a  
24 time frame when y'all can finally -- and I don't mean you have  
25 it resolved, but you have agreed on a procedure to resolve it?

1 MS. COLMENERO: I think originally the defendants had  
2 suggested that at the -- that there be -- it's kind of a 60-day  
3 meet-and-confer process, and then the parties file a joint  
4 status report with the Court letting the Court know where the  
5 parties stood. I think that that's still reasonable, and  
6 hopefully we can strive to meet that deadline or perhaps reach  
7 an agreement on a new deadline as these conversations progress.

8 THE COURT: Mr. Schwei?

9 MR. SCHWEI: Yes, Your Honor. I think it makes sense to  
10 provide Your Honor with a joint status report on that date  
11 originally suggested, which was July 27th, 2015. I'm not sure  
12 whether all, you know, provision of information will be  
13 completed by that point, but I think certainly more will be  
14 completed, and we'll have a clearer focus at that time with  
15 respect to what additional information may be at issue.

16 THE COURT: Okay. Why don't I -- I'm going to go ahead  
17 and amend that a little bit. Let's give to the end of July.  
18 The 31st is a Friday anyway, and I always work better on Friday  
19 deadlines. So why don't we say if y'all can get me a status  
20 report by July 31st.

21 MR. SCHWEI: Certainly, Your Honor.

22 THE COURT: Okay. All right. Let's turn to what I  
23 guess I consider the other issue then. What do I do, if  
24 anything, about the representations that were made during the  
25 hearings that nothing was going to happen between the time that



1 the representations were made and February 18th?

2 The government has filed in response to my order a variety  
3 of documents along with both a redacted brief and an unredacted  
4 brief. The state has obviously complained that they can't  
5 figure out enough information from what's been filed.

6 In the brief, the Court's been assured that, hey, look, we  
7 basically notified the Court within two or three business days  
8 when we found this out, but then you cite me to some documents  
9 that are contained in the packages that you tell me I can't look  
10 at. And so -- and here they are. I have not unsealed them.  
11 They're both right here.

12 So how do I rule on something that I can't look at?

13 MS. RICKETTS: My turn, I'm guessing. Good morning,  
14 Your Honor.

15 I appreciate the awkwardness of that situation. Obviously  
16 we have struggled as well to make sure that we provided full  
17 information to Your Honor everything that was responsive to the  
18 April 7th order as well as as much explanation as we could  
19 possibly provide. We were very mindful of trying not to waive  
20 some pretty core privileges. It is unusual, to say the least,  
21 to be providing mental impressions of attorneys, drafts,  
22 pleadings in litigation in the midst of a litigation. And so  
23 what you got, Your Honor, reflected that struggle.

24 We do think, however, based on the narrative that we  
25 provided -- and we would note that the plaintiffs did receive

1 most of that narrative. What was redacted were things like  
2 dates and attorney-client communications which we thought were  
3 important to protect.

4 Taking a look at the privilege log, the dates in the  
5 metadata list chart that we provided, that those in combination  
6 with the narrative hopefully lay to rest any concerns that  
7 anyone from the government's side was trying to intentionally  
8 mislead anyone, certainly not the Court or the plaintiffs; that  
9 it was a genuine disconnect in not understanding what the  
10 questions were.

11 THE COURT: Where do I get that? I'm not arguing with  
12 you that that evidence may show that, but where is that  
13 evidence? Help me here.

14 MS. RICKETTS: The evidence is in the narrative as well  
15 as in the --

16 THE COURT: I mean, do I have any affidavits? Do I have  
17 any proof? I mean, that's really what I -- I need to see.

18 MS. RICKETTS: Your Honor, no, we haven't provided any  
19 affidavits. I would say that a lot of the pieces of information  
20 that we've provided put together help explain the stories. So,  
21 for example, the declaration of Director Rodriguez helps explain  
22 much of what was happening during that two-week period that the  
23 Court was particularly concerned about after the issuance of the  
24 injunction and the advisory. His declaration helps explain much  
25 of what the agency was doing and obviously their counsel were

1 doing.

2 The Court pleadings during that time period would also help  
3 explain what Department of Justice counsel were particularly  
4 busy with. This was a very intense period on both sides. So  
5 the Court's order came in, for at least those on the east coast,  
6 fairly late that Monday night. I'll just note that Tuesday was  
7 a snow day, so everyone was snowed in. And your Honor's opinion  
8 was fairly thorough.

9 THE COURT: We have very few snow days here.

10 MS. RICKETTS: I understand that. I understand that,  
11 Your Honor. We wish we did too.

12 And so we -- during that time period, the Department of  
13 Justice was getting permission to appeal. We were drafting a  
14 stay motion. We were conferring, actually conferring among  
15 ourselves first and then conferring with the plaintiffs, as I  
16 understand that the Court had given us 14 days in which to make  
17 a recommendation for next steps in the litigation. That  
18 culminated with a joint motion for extension of time.

19 But during that two-week period, everyone was incredibly  
20 busy. What we think the in-camera pleading demonstrates is when  
21 we learned from our client the number. And I apologize for  
22 stumbling. I'm trying very hard not to divulge privileged  
23 information. But when we learned the number, for us that was a  
24 lightbulb going off, and we've described that in the pleading  
25 that this is something we should let the Court know, and we

1 should let the Court know immediately. And the metadata chart  
2 and the privilege log demonstrate just how quickly we produced  
3 that advisory to the Court.

4 So all of those things combined -- we certainly understand  
5 why the Court was concerned. We now understand in hindsight  
6 what the disconnect was. We are truly sorry for that. There  
7 was no one at the Department of Justice or the Department of  
8 Homeland Security who were trying to hide that from the Court or  
9 from the plaintiffs. We simply did not believe that it was  
10 material to what was being argued on irreparable injury in the  
11 preliminary injunction proceeding. We now understand that for  
12 the Court and the plaintiffs it was, and so we are very sorry  
13 for that. But there is nothing in anything that we've submitted  
14 that would even suggest that we did any of that intentionally.  
15 In fact, the contrary. That as soon as we made the connection  
16 finally, we moved with lightning speed to make sure we notified  
17 the Court.

18 THE COURT: Well, here's my -- let me just be blunt with  
19 both sides here. I don't like sanctioning lawyers. In 13  
20 years, I can remember twice when I've done it. And once was a  
21 situation where one side clearly misled the other side on  
22 something that was down a frivolous rabbit trail that both the  
23 other side and the Court in a hearing had said this doesn't  
24 sound like it's even remotely possible, and they assured us it  
25 was and then figured out that it wasn't after they cost the

1 other side a bunch of money. And I made them pay that bunch of  
2 money back.

3 And the other was an incident where counsel basically  
4 called -- accused some of Mr. Hu's colleagues of being racist  
5 and acting in a discriminatory fashion. And I basically told  
6 the lawyer, "If you've got proof of that, I want to hear it.  
7 And if you don't have proof of that, you ought to apologize to  
8 them."

9 And the lawyer realized he had stepped over the bounds and  
10 basically apologized to the U.S. Attorneys and basically said:  
11 Look, it was the heat of battle and I said something I shouldn't  
12 have said. And after he apologized, I mean, I didn't sanction  
13 him further. He apologized.

14 And sometimes things get said in the heat of battle or --  
15 you can call it the heat of battle or, you know, any time  
16 there's a contentious hearing going on, you may not have all the  
17 facts at your fingertips. And, you know, even with computers  
18 nowadays, you might not know what's going on. So I have a --  
19 always have probably, maybe to a fault, an inclination not to  
20 sanction lawyers as long as I think they're in good faith and  
21 trying to do the best they can.

22 What I need -- and I guess the first step is the remedial  
23 action. If I'm convinced, hey, you've made a mistake and we're  
24 going to fix it, that's what's important to me. More important  
25 than anything else, because we all make mistakes. You know, the

1 Fifth Circuit may tell -- in the next month or two may say I  
2 made a mistake. And that's understandable. You can't -- we're  
3 not -- we're all human. We all make mistakes.

4 But what I want to see is us try to fix those mistakes as  
5 quickly as we can and then move on. And that's one of the  
6 reasons I'm holding this hearing today. I'm not unmindful that  
7 the merits are going to be argued next month; but regardless of  
8 how the Fifth Circuit rules, I'm stuck with this problem. You  
9 know, if they reverse me, I'm stuck with this problem. If they  
10 affirm me, I'm stuck with this problem.

11 So what I want to do is get rid of this problem so we can  
12 all go on with our lives. And if the case proceeds, it proceeds  
13 on the merits and not on some rabbit trail that we're all caught  
14 up in.

15 MS. RICKETTS: I appreciate that, Your Honor, and we're  
16 absolutely on the same page. What I would suggest is that the  
17 process that we're engaged in on the post-injunction issuance of  
18 the three EADs is a productive beginning to that. And I believe  
19 Texas has agreed with that, that we would begin providing the  
20 information that Mr. Schwei described to Your Honor, and that  
21 would give the states an opportunity to see what sort of  
22 information is available so that they can assess what sort of  
23 remedies might be practical from their perspective.

24 We think that's a productive process and that it would help  
25 potentially resolve both issues and that the parties should have

1 the opportunity at least to explore what the information is and  
2 how difficult the remedial measure might be to undo the 108,000.  
3 We'd certainly want the opportunity to brief that, but we think  
4 this meet-and-confer process might be the most productive way  
5 and most expeditious way in the first instance to sort that out.

6 THE COURT: Ms. Colmenero, let me ask you a hypothetical  
7 question. Assuming that we can fix the problem, I mean, did the  
8 states, once that problem fixed, do they have any -- or feel any  
9 need for further action by the Court?

10 MS. COLMENERO: Well, I think it depends on what fixing  
11 the problem really entails, and I think that's where I'm a  
12 little unclear.

13 There was the problem concerning the post-injunction 2,000  
14 grants, which the defendants have taken corrective action  
15 measures to change those from three years to two years  
16 consistent with the 2012 directive. If fixing the problem for  
17 the 108 consists of taking a similar corrective action measure  
18 and changing that from three years to two years for those  
19 individuals and then engaging in the same type of  
20 meet-and-confer process to determine how that may have impacted  
21 the plaintiff states, I think that's a really good beginning in  
22 terms of fixing the problem. Because from the plaintiff states'  
23 perspective, I think there's two problems that exist with these  
24 pre-injunction 108 grants, which are that they were done under  
25 the 2014 directive during a period of time when we thought the

1 status quo would remain the same while the PI was proceeding.  
2 And then second of all, pretty much the reliability of these  
3 statements that were being made during that period of time.

4 But in terms of the harm, I think engaging in the same  
5 meet-and-confer process as the 2,000 would allow the plaintiff  
6 states to then assess whether or not we can attempt to do any  
7 clawback or unwinding of benefits that may have been extended to  
8 this class of individuals during the time periods in dispute  
9 here and to see whether or not that -- that it's really kind of  
10 worth our efforts at the end of the day because it may prove to  
11 be too difficult, but we don't know that at this point. We  
12 don't have enough information to really make that determination.

13 THE COURT: Mr. Schwei, let me ask you. I mean, what is  
14 it -- I mean, I'm asking you a practical question. I mean, what  
15 is it that each of these individuals have? They have some card  
16 that gives them permission to work?

17 MR. SCHWEI: Yes, Your Honor. The specific focus of  
18 that meet and confer is the EADs, the Employment Authorization  
19 Documents, which is a physical document which, as I understand  
20 it, individuals can present to the Texas Department of Public  
21 Safety. It says three years on it. And then the Texas  
22 Department of Public Safety, according to one of the  
23 declarations they filed, the Peters declaration, the Texas  
24 Department of Public Safety would issue a driver's license for  
25 three years, so there is a piece of paper. With respect to the



1 corrective actions that the agency is taking, that's spelled out  
2 in the letter, which again, I'm happy to provide to Your Honor.

3 But just to summarize, the corrective action that the agency  
4 is taking is to, No. 1, correct the agency's own internal  
5 records. No. 2, to issue a two-year employment authorization  
6 document to that individual. No. 3, to send the individual a  
7 letter saying as soon as you receive the two-year EAD, you must  
8 return the three-year EAD.

9 And then finally ensuring that the system, the SAVE system  
10 that the plaintiffs mentioned earlier, which is precisely what  
11 the Texas Department of Public Safety would use to verify the  
12 piece of paper, the agency is ensuring that that system is  
13 updated to reflect only two years.

14 So hypothetically if an individual presented a three-year  
15 EAD to the Department of Public Safety, when they query the  
16 agency SAVE system, after all the corrective actions have  
17 occurred, the SAVE system would inform the Texas Department of  
18 Public Safety, in fact, the EAD is only valid for two years, not  
19 three years. So there's a range of corrective actions that are  
20 being taken, and the letter --

21 THE COURT: Can't -- and I'm saying this with the  
22 knowledge that there's a wildly vast difference between the  
23 pools, the 108,000 and the 2,000. But with regard to the 2,000  
24 that actually violated the injunction, I mean, why can't  
25 somebody physically go knock on their door and say, "Here's your

1 new card. Give me your old card"?

2 MR. SCHWEI: Well, Your Honor, the judgment of the  
3 agency at this time is to first start by sending a letter  
4 informing that individual that they must return the old card  
5 upon receipt of their new card, and that failing to return the  
6 card could result in adverse action. And those letters -- what  
7 we have confirmed and provided to Texas in the letter is that  
8 all of those letters have gone out to the individuals in the  
9 plaintiff states.

10 THE COURT: And how much time have you given them?

11 MR. SCHWEI: The letters to those individuals do not  
12 include a specific deadline. They say you must return it upon  
13 receipt of your new two-year card. This process is ongoing, and  
14 we've provided to the -- to the plaintiffs specific information  
15 about the numbers that have gone out currently, and that process  
16 continues going forward.

17 THE COURT: And have you given the plaintiffs the names  
18 of those 2,000 individuals?

19 MR. SCHWEI: No, Your Honor. In our meet and confer,  
20 we -- Texas did not ask for the names at least at this stage.  
21 We -- I would of course defer to them on their position. But  
22 they expressed openness that at least for the beginning  
23 provision of information, it was not necessary to have the names  
24 of the individuals.

25 MS. COLMENERO: And just to clarify that one --

1 THE COURT: Stay right there, Mr. Schwei.

2 MS. COLMENERO: Just to clarify that one point about the  
3 names of the individuals. I think if there was another form of  
4 identifiable information that would allow us to determine the  
5 identity of that individual, such as the work authorization ID  
6 number where we could actually determine whether or not a  
7 professional license was extended to that individual or a  
8 driver's license was extended to that individual or any other  
9 form of benefit, that would be useful information. All we've  
10 been provided thus far is simply a tally of the individual -- of  
11 the number of individuals who reside in the plaintiff states.

12 THE COURT: Okay. I think you need to provide them some  
13 kind of way for them to identify these people. And I also think  
14 with regard to the 2,000 that actually violate the injunction is  
15 that you ought to step up your efforts. And if it means going  
16 and knocking on their door and saying, "Here's your two year.  
17 Give me your three-year card," you ought to do that. I mean,  
18 how hard can that be?

19 MR. SCHWEI: Your Honor, those -- Your Honor's  
20 sentiments I will certainly take back and report to the agency  
21 in charge of administering the program. I think that with  
22 respect to the provision of information to Texas specifically  
23 about identifying information, that is certainly a subject that  
24 we are open to, and in our --

25 THE COURT: Well, I'm talking about all the plaintiff

1 states, not just Texas. I mean, you got to have a list  
2 somewhere or you wouldn't know there was 2,000.

3 MR. SCHWEI: Again, Your Honor, in our May 27th filing,  
4 one of the reasons we requested 60 days is precisely so that if  
5 Texas and the rest of the plaintiff states wanted identifying  
6 information, we could work with the agency to find out whether  
7 there is such identifying information that's not as sensitive as  
8 their names and whether a protective order would be necessary.  
9 I'm simply -- I'm not trying to suggest that we would not  
10 provide such information, just that further discussions with the  
11 agency and with Texas and the other plaintiff states would be  
12 necessary before --

13 THE COURT: Well, I don't see why -- I mean, I see those  
14 in a whole different category. I mean, it's one thing -- I  
15 mean, you can say, gee, we didn't know we were talking about the  
16 other 108,000 in the period before the injunction. But, I mean,  
17 this period after the injunction, I mean, you clearly violated  
18 the injunction.

19 MR. SCHWEI: Your Honor, DHS intended to stop all  
20 three-year terms immediately after the injunction, and the --  
21 and I think as soon as DHS realized that these three-year terms  
22 had erroneously gone out, immediately began taking corrective  
23 action precisely because they recognized that these were errors  
24 that should not have been issued.

25 THE COURT: Well, but the DHS has got to know who these

1 2,000 people are. They could go knock on their door and say,  
2 "Hey, we made a mistake. You know, trade us back the card."  
3 And then the states wouldn't be -- have to go through all  
4 this -- these hoops.

5 MR. SCHWEI: Right, Your Honor. And I think it's  
6 important to keep in mind that it's more than just the paper  
7 card. And this gets back to --

8 THE COURT: That's why I asked what it was.

9 MR. SCHWEI: Sorry. The -- yes, Your Honor, there is a  
10 paper card that is the employment authorization document. But  
11 whether an individual retains their three-year EAD is not  
12 dispositive of whether that EAD could be used for any particular  
13 purpose. And that gets to the SAVE system, which is if the  
14 individual tried to use a three-year EAD that should have been  
15 returned to obtain a three-year driver's license from the Texas  
16 Department of Public Safety, our understanding is they would not  
17 be able to do so because the SAVE system would inform the Texas  
18 Department of Public Safety that only two years of that EAD are  
19 valid.

20 THE COURT: Don't you operate the SAVE system?

21 MR. SCHWEI: Yes, Your Honor.

22 THE COURT: You, the federal government? So how hard  
23 would it be to change that? You have a computer programmer go  
24 in and change it.

25 MR. SCHWEI: Precisely, Your Honor. And that --

1           THE COURT: I mean, that should have already been done.  
2       Hasn't it been done?

3           MR. SCHWEI: Your Honor, and that's exactly what we've  
4       been discussing with the plaintiffs in terms of the corrective  
5       actions.

6           THE COURT: Well, I expect you to do that. I'm shocked  
7       that you haven't done that.

8           MR. SCHWEI: Your Honor, we are in the process of doing  
9       that, and we are nearly complete with doing so. We gave the  
10      plaintiffs a specific number of how many have been corrected,  
11      which is specifically --

12          THE COURT: Wait a minute. How hard can it be to  
13      correct your own computer? I mean, a computer programmer can do  
14      that.

15          MR. SCHWEI: Your Honor, as of June 17 --

16          THE COURT: Give them a list of 2,000, and whether  
17      they're by IDs or by names, I mean, these are the questions -- I  
18      mean, there's no question with regard to these 2,000. You guys  
19      violated the injunction.

20          MR. SCHWEI: Your Honor, just to get to Your Honor's  
21      concern about the SAVE system, as of June 17th, at least 793 of  
22      the 814 individuals in the plaintiff states have now been  
23      updated, and DHS expects that the remainder will be done very  
24      soon. And we are certainly happy to --

25          THE COURT: Why can't -- what about the last 20? I

1 mean, I just don't understand how it -- why it takes this long.  
2 I mean, you realized you violated the injunction. Let's fix it.  
3 I mean, this is what is frustrating for me, is there seems to  
4 be, okay. We violated the injunction. No big deal. Let's just  
5 go on. I mean, you know, this is the kind of thing that it  
6 looks like you're deliberately doing this at as slow as possible  
7 pace as you could possibly do it.

8 MR. SCHWEI: Respectfully, Your Honor, I do not think  
9 that is accurate. And I think the declaration submitted from  
10 Director Rodriguez and from Mr. Neufeld demonstrate that as soon  
11 as DHS realized that it had mistakenly issued three-year terms  
12 rather than two-year terms after the injunction, it immediately  
13 began corrective action. And that corrective action is  
14 underway, and we are working expeditiously to complete that  
15 corrective action for the complete universe of 814 individuals  
16 in the plaintiff states.

17 THE COURT: All right. It's baffling to me how you  
18 can't have corrected your own computer system.

19 MR. SCHWEI: Your Honor, and that's --

20 THE COURT: I mean, the Chinese seem to be able to get  
21 into our computer system without any problem.

22 MR. SCHWEI: Your Honor, that is precisely what the  
23 agency is doing is correcting the system, and they are very well  
24 along that process and are working expeditiously to complete  
25 that process. And that's precisely what we have been meeting

1 and conferring with Texas about, and we think it would be most  
2 productive to continue those discussions, including informing  
3 them when all of the 814 individuals in the plaintiff states  
4 have been corrected.

5 But again, Your Honor, that -- the issue of the SAVE system  
6 is just to emphasize that the -- that the paper card itself is  
7 not dispositive as to whether an individual could actually use  
8 it for a particular purpose.

9 THE COURT: Well, I'm just -- I can't believe the day  
10 you found out that you had 2,000 people, that you didn't correct  
11 the computer system.

12 MR. SCHWEI: Your Honor, the corrective actions began  
13 immediately, but the computer system and all of the range of  
14 corrective actions takes some time to play out. But I assure  
15 you they are working expeditiously to complete that process.

16 THE COURT: All right. Well, I expect with regard --  
17 especially with regard to the 2,000, that that be a high  
18 priority, front burner item. So regardless of your meet and  
19 confer with regard to the 108,000, if I don't see some action  
20 with regard to those 2,000, then we are going to have a problem.

21 MR. SCHWEI: Understood, Your Honor.

22 THE COURT: Because there's no doubt with regard to  
23 those that the United States violated the injunction.

24 MR. SCHWEI: And, Your Honor, DHS appreciates that all  
25 three-year terms were to stop after the Court's injunction.



1 That was their intent to do so, and that they mistakenly issued  
2 these three year terms, and they are -- they immediately began  
3 correcting them and are in the process of correcting them.

4 THE COURT: Okay. Well, the process better pick up some  
5 speed. I mean, you only have a couple hundred thousand  
6 employees. Someone up there surely can get in the computer SAVE  
7 system and change the three to a two.

8 MR. SCHWEI: Respectfully, Your Honor, I think it has  
9 been going very quickly with respect to the SAVE system in  
10 particular. 793 out of the 814 individuals in the plaintiff  
11 states are now complete. I think that shows how quickly this  
12 is, in fact, occurring.

13 And again, with respect to the remainder not yet corrected,  
14 the agency is working expeditiously to correct that set.

15 THE COURT: Okay. All right. Well, I expect by the end  
16 of July that that report ought to have that you fixed the  
17 problem with regard -- not just you met and conferred. With  
18 regard to the 2,000, I expect that to be fixed.

19 MR. SCHWEI: And, Your Honor, I would be happy to walk  
20 through the entire step-by-step process that is required before  
21 that SAVE system is, in fact, updated. I think what the process  
22 shows is that it's designed to be one that -- it's designed to  
23 allow for quality assurance, precisely to ensure that things are  
24 done properly. And there are steps along the way where it may  
25 take some time, but those time periods are built in to ensure

1 that the overall process works effectively. But I'd be happy to  
2 walk Your Honor through it.

3 THE COURT: Go ahead. Walk me through it.

4 MR. SCHWEI: Certainly. So with respect to an  
5 individual who is erroneously granted three-year terms, the  
6 first step is to -- is for a -- an individual to manually reopen  
7 that case file and adjudicate the -- the person from three years  
8 down to two years. Essentially to convert it. That would get  
9 entered into the claims database, all of which I believe -- most  
10 of this, if not all of it, is spelled out in more detail in  
11 Mr. Neufeld's declaration, but there are various databases and  
12 systems within USCIS. But once the two-year approval date is  
13 entered into the claims database, that generates certain  
14 approval notices both for deferred action and then separately  
15 for employment authorization.

16 Once the deferred -- once the approval notices are produced,  
17 that causes the employment authorization document card to be  
18 produced, which occurs in a separate facility apart from the  
19 service centers where these individuals are -- individual cases  
20 are actually adjudicated.

21 In that card processing center, there is a 48-hour hold, and  
22 that's 48 business hours, that allows for the service centers to  
23 determine -- it gives them an opportunity where, if there has  
24 been an error, they can pull the case back at that stage before  
25 the card actually gets produced.

1           So for every EAD that gets produced, there's a 48-hour hold  
2     in terms of business hours. And then once the actual EAD is  
3     produced, from there it takes one to two days before the SAVE  
4     system is updated.

5           And so with respect to the 814 individuals in the plaintiff  
6     states, all of those individuals have been sent letters  
7     informing them that they must return their card as soon as they  
8     receive their two-year EAD. As of June 17th, 8 -- at least 806  
9     individuals were sent their two-year EADs. With respect to the  
10    SAVE system, at least 793 of the 814 individuals have been  
11    updated in SAVE. And so --

12           THE COURT: How many have returned their three year?

13           MR. SCHWEI: Your Honor, with respect to the plaintiff  
14     states, I believe as of sometime last week, almost half returned  
15     their three-year EADs. But again, they were -- that number will  
16     only go up as they continue to receive their three-year EADs  
17     and -- or their two-year EADs, excuse me, and as the agency  
18     follows up with them.

19           THE COURT: All right. Well, this process you're  
20     describing is a process that looks like it could be completed in  
21     a matter of weeks, and it's been weeks.

22           MR. SCHWEI: Certainly, Your Honor. The -- the agency  
23     has been working expeditiously to complete this process. I  
24     believe those numbers reflect the speed with which the agency is  
25     working, and they are certainly working expeditiously to finish

1 the process of updating these individuals from three-year terms  
2 to only two-year terms.

3 THE COURT: All right. Well, here's -- I'm going to  
4 wait until July 31st, but I expect that report on July 31st to  
5 say that the 2,000 have been resolved. And if they're not  
6 resolved, then I'm going to figure out what action to take. I  
7 mean, if you clearly can't do this in two months after you've  
8 discovered you violated an injunction, you're not trying.

9 MR. SCHWEI: Well, Your Honor, respectfully, we are  
10 trying, and we are working expeditiously.

11 THE COURT: You could give that document to an agent.  
12 He could go out there and knock on the door and say:  
13 Mrs. Smith, we accidentally gave you a three year. You should  
14 have only got a two year. Trade me cards. And you have  
15 thousands of agents or employees located in every state.

16 MR. SCHWEI: And, Your Honor, the agency understands  
17 that this is a top priority, and they are working expeditiously  
18 to complete the process. The -- with respect to any corrective  
19 actions, the plaintiffs have not asked for those, and I think it  
20 would be premature to address those.

21 THE COURT: Whoa, whoa, whoa.

22 MR. SCHWEI: With respect to any further actions from  
23 Your Honor.

24 THE COURT: Well, no, no. With regard to the 2,000 that  
25 violated my injunction, I'm ordering you to do that. I don't

1 care what the plaintiffs say. You need to fix those 2,000.

2 MR. SCHWEI: Respectfully, Your Honor, the agency is  
3 taking corrective action and has been taking corrective action.

4 THE COURT: Well, I expect at the end of July for you to  
5 tell me those 2,000 are fixed.

6 MR. SCHWEI: Understood, Your Honor.

7 THE COURT: I mean, the others we can argue about  
8 whether there was confusion caused or something was misleading  
9 or whatever, but you yourself have admitted you violated the  
10 injunction with regard to those 2,000.

11 MR. SCHWEI: Your Honor, I don't think it's necessary to  
12 parse out whether they technically violated the injunction or  
13 not. The important thing is the agency intended to -- intended  
14 that as soon as Your Honor's injunction issued, all three-year  
15 terms would stop.

16 THE COURT: I know, but they didn't do it. I mean, and  
17 I -- and one of the reasons I haven't sanctioned anybody yet is  
18 because I -- it's my feeling that they did intend to do it.  
19 But, you know, good intentions only get you so far.

20 MR. SCHWEI: Respectfully, Your Honor, I think there's  
21 no basis in the record for that. I think the declarations from  
22 Director Rodriguez and Mr. Neufeld demonstrate that these were  
23 errors, and the agency recognizes them as errors that should not  
24 have occurred. And that is precisely why the agency is  
25 taking -- began corrective actions immediately and is continuing

1 those.

2 THE COURT: And, Mr. Schwei, I'm giving you the benefit  
3 of the doubt that you didn't do it on purpose, that it was an  
4 accident, that it happened. But when somebody does something  
5 that's an accident and it's violative of a court order, whether  
6 you agree with the order or not, you fix it.

7 And what I'm saying is you guys aren't fixing it, or at  
8 least you aren't fixing it fast enough. So with regard to -- I  
9 understand 108,000 is a completely different universe. But with  
10 regard to 2,000, especially 2,000 that you admit violate the  
11 injunction, that would -- that's eminently fixable.

12 MR. SCHWEI: Respectfully, Your Honor, just to correct  
13 the record, I don't think I've admitted that they violate the  
14 injunction.

15 THE COURT: Your briefs have.

16 MR. SCHWEI: I think the important point is that they --  
17 the agency recognizes that they were erroneously issued because  
18 they intended to stop all three-year terms after the injunction.

19 THE COURT: Okay. I'm not getting in a semantic  
20 argument with you, Mr. Schwei. Whether they were erroneously  
21 issued or whether they were wrongfully issued or whether they  
22 were issued in violation of a court order, I don't care. I'm  
23 telling you to fix it.

24 MR. SCHWEI: Understood, Your Honor. And the agency  
25 began fixing it immediately and will continue to do so. But we

1 understand Your Honor's urging that this needs to be a top  
2 burner priority, and I will certainly reflect that sentiment to  
3 the agency.

4 THE COURT: Okay. And also provide the states, all the  
5 plaintiff states with proof that you've taken care of this,  
6 okay?

7 MR. SCHWEI: Your Honor, and that's exactly what we've  
8 been discussing with the plaintiffs and provided them the first  
9 set of information on Friday, and we're happy to continue  
10 discussing with them additional information.

11 THE COURT: Okay. All right. Let me circle back,  
12 Ms. Ricketts, and visit with you for a minute. Setting aside  
13 whether we're fixing a problem fast enough or not, I would like  
14 to -- and I'll wait for the status report in July as far as that  
15 goes. But I would like to lay to rest anything else that has to  
16 do with these problems.

17 One of my main problems with doing that is my inability to  
18 look at everything you filed. And I honored your request; but,  
19 I mean, you're asking me to buy a pig in a poke. I mean, you  
20 can imagine: Judge, everything you need to look at that proves  
21 what we did was right is in these envelopes; but by the way,  
22 Judge, don't look at the envelopes. So help me here.

23 MS. RICKETTS: I appreciate the dilemma, Your Honor. I  
24 think from our perspective what is in the envelopes is not  
25 necessarily what you need to resolve any doubt about whether

1 there was any intentional misrepresentation to the Court by the  
2 department. We provided all of that information because that's  
3 what Your Honor requested. We do think it's consistent with the  
4 fact that there was no intentional misrepresentation, absolutely  
5 no intent by anyone to try to deceive the plaintiffs or the  
6 Court. So they are connected. I appreciate that. They're  
7 related. But reviewing those documents is not necessary from  
8 our perspective to come to that conclusion.

9 THE COURT: Okay. All right. Here's one of my  
10 problems, and it's -- it was just like the earlier example I  
11 gave you where, you know, we got by it quickly is, you know,  
12 somebody just come in and say: Look, you know, we messed up.  
13 We're sorry. We didn't mean to mess up. You know, we apologize  
14 to the plaintiffs. We screwed up. Stuff happens. You know, we  
15 can all live with that. But, I mean, that hasn't happened here.

16 MS. RICKETTS: Your Honor, respectfully, I think we have  
17 apologized every way we can here in terms of we did not intend  
18 to do this. We did not intend to mislead the plaintiffs, and we  
19 did not intend to mislead the Court. I'm not sure if I'm  
20 understanding Your Honor's question correctly, though.

21 THE COURT: Well, I mean, I -- okay. I think this could  
22 have been resolved a long time ago with a more direct approach.  
23 Let me put it that way.

24 MS. RICKETTS: Understood, Your Honor. But we are  
25 trying to be as up-front with the Court as we possibly can be



1 that there absolutely was no -- anywhere, no intention to  
2 mislead the Court and misrepresent.

3 But we have also offered, I think from the beginning, my  
4 understanding, from the beginning and certainly today that if  
5 Your Honor would like it, we could brief possible remedies for  
6 the 108,000. Again, it's not something the plaintiffs have yet  
7 asked for, and we do think the meet-and-confer process might be  
8 a more productive way to at least determine --

9 THE COURT: No, I'm willing to live with the --

10 MS. RICKETTS: -- what's possible.

11 THE COURT: -- meet and confer on the 108,000. I want  
12 the 2,000 fixed.

13 MS. RICKETTS: Understood.

14 THE COURT: And with regard to any other issue, I'll  
15 take a look at it. My goal, one way or the other, however the  
16 appellate court rules -- and, I mean, quite frankly, I think all  
17 of us in this room probably realize that we've had one panel  
18 that's ruled. We have another panel that ruled. There's no  
19 telling which way they'll rule. You know, if they rule the same  
20 way or if they rule the opposite way, I mean, I think it's  
21 headed to an en banc probably rehearing, I mean realistically,  
22 and then probably up to the Supreme Court. I mean, that's -- if  
23 you were a betting person, that's probably what you would agree.  
24 But regardless of how they rule, I would like to put this to  
25 bed.

1 MS. RICKETTS: We would as well, Your Honor. Agreed. I  
2 mean, again, we don't think it's necessary because we think the  
3 privilege log and all the other materials that we provided  
4 should lay to rest any concerns. But I will note that the  
5 states have also suggested that the Court could refer all of the  
6 privileged documents to a magistrate judge if that's something  
7 that will give the Court comfort. We have no objection to that.

8 THE COURT: Well, the problem is the magistrate judge is  
9 not going to know the context or anything. I mean, we can see  
10 that. Just look at the last Fifth Circuit opinion where one of  
11 the judges suggested that the Court, me, shifted the burden of  
12 proof to the government when I questioned the -- the accuracy of  
13 one of the statements that was made. And that wasn't -- I  
14 wasn't at all shifting the burden of proof. What I was saying  
15 is: Okay. You're saying this is an accurate statement. Show  
16 me it's accurate. Show me. And I gave them two weeks.

17 And, I mean, it was just a matter of questioning or  
18 challenging the credibility of a statement that didn't have  
19 anything to do with shifting the burden of proof.

20 And that's the problem when somebody doesn't have the  
21 context with something. And that's my reluctance about sending  
22 it to a magistrate judge who hasn't sat through all these  
23 hearings. Plus if -- I mean, you're telling me there's nothing  
24 in the envelopes that's going to help. And if it's not going to  
25 help me, how can it help a judge that doesn't even know what the

1 issues are.

2 MS. RICKETTS: And I think what is in the envelopes  
3 would certainly not show any intention whatsoever to mislead the  
4 Court. I suspect what's in the envelopes would be fairly boring  
5 to read through. I can certainly suggest that it was fairly  
6 boring for me to read through them because it would be endless  
7 drafts.

8 THE COURT: That's the first statement I'm almost  
9 100 percent sure I'll agree with.

10 MS. RICKETTS: Yes. Thank you, Your Honor.

11 But I do think to the extent the Court has concerns, and we  
12 understand they were sincere concerns based on how this played  
13 out, you know, those documents could potentially lay to rest  
14 any -- a portion of those concerns.

15 But I do think again, the metadata chart which I don't fully  
16 understand at this point in my career, but I do understand that  
17 it reflects when the draft advisory that Your Honor had asked  
18 about, when that was drafted, when it was edited and that sort  
19 of thing, that will show the speed with which we moved. The  
20 privilege log will also show the speed with which we moved, and  
21 the list of individuals on the privilege log will indicate the  
22 number of individuals who participated in that process, which  
23 again makes the speed with which we moved all the more  
24 remarkable.

25 THE COURT: Okay. All right. Ms. Colmenero, is there

1 anything else from the state's standpoint that we can accomplish  
2 today?

3 MS. COLMENERO: Sure. Just a couple of points that we  
4 want to make. And I'll start first with the documents that were  
5 produced in response to the Court's April 7th order. The  
6 plaintiff states were given very limited information. We got 33  
7 pages of publicly filed documents and then a 200-page privilege  
8 log. It's our position that the Court now -- now that you have  
9 the fully unredacted brief, you have the envelopes of the  
10 withheld material that are logged on the privilege log, is now  
11 in the best position to determine whether or not any of the  
12 statements are, in fact, misleading.

13 We still need some additional information. We contend that  
14 the assertions of privilege made by the defendants are broadly  
15 asserted, and we contest that some of them just frankly do not  
16 apply, given the circumstances of this case. And that is what  
17 we've briefed to you in our brief submitted to this Court.

18 The second issue I want to raise, and Your Honor hit on it,  
19 is I do agree that this issue probably could have been resolved  
20 with respect to the Court's April 7th order sooner. And I think  
21 from the plaintiff states' perspective, if there had been some  
22 willingness to take corrective action with respect to these  
23 108,000 grants early on, I think a lot of this -- these  
24 proceedings could have been avoided.

25 And so my hope is with the meet and confer with respect to

1 the 108, perhaps the parties are able to reach some type of  
2 agreement in terms of corrective action measures the defendants  
3 can take with respect to these 108,000, knowing -- but from the  
4 plaintiff states' perspective, I wish just to state on the  
5 record that we may have already suffered injuries that are just  
6 too costly for us to unwind or even know that we can unwind at  
7 this point.

8 Finally I also wanted to reiterate on the record that our  
9 main priority going forward as this case proceeds forward to a  
10 trial on the merits is compliance with the Court's preliminary  
11 injunction order. And we do have some serious concerns in light  
12 of the 2,000 grants that were made after the Court's preliminary  
13 injunction order.

14 And I think that the declarations that the defendants have  
15 put forward show what we've said all along, that this is a very  
16 large, complex federal program with lots of moving parts, and  
17 it's unclear to us that defendants may not even know the full  
18 extent to which their client agencies are operating.

19 With that being said, we have requested several options in  
20 our latest filing with the Court that Your Honor may wish to  
21 consider, which are essentially compliance assurance mechanisms  
22 which include either a certification requirement by the  
23 defendants that they are, in fact, complying with the  
24 injunction. I will note it took them nearly until May to  
25 determine that these 2,000 grants were made in violation of the

1 Court's injunction, or at least that's when the plaintiff states  
2 were aware. So -- and they have never fully stated that they  
3 are, in fact, 100 percent compliant with the injunction. And  
4 from our perspective, they continue only to tell us that they  
5 are, quote, refining their understanding of the processes in  
6 place to determine how these 2,000 grants were made after the  
7 Court entered their injunction.

8 So with that, you know, we propose some type of compliance  
9 assurance mechanism, either in the form of a monthly or weekly  
10 reporting requirement, and we've also proposed this idea of an  
11 external compliance monitor. And frankly, it's just the -- the  
12 plaintiff states have concerns going forward, and we just wish  
13 to state those on the record.

14 THE COURT: Okay. Ms. Ricketts, do you want to either  
15 reply to that and/or bring up anything from the government's  
16 standpoint that we can resolve today?

17 MS. RICKETTS: Yes, Your Honor, just briefly. So I do  
18 want to make very clear that we apologize on behalf of the  
19 entire United States Government for how this has played out.  
20 The effects of the 108,000 were in changing the status quo. And  
21 I would take a slight issue with what Ms. Colmenero had said.  
22 We have offered from the very beginning to brief what remedy  
23 might be appropriate. We remain willing to do that. Again, we  
24 think this meet-and-confer process would be more productive.

25 And the only other thing, I'll let Mr. Schwei address the

1 compliance aspect here, but I would say that based on the  
2 information that we have, we are currently 100 percent in  
3 compliance. The Department of Homeland Security, the Department  
4 of Justice are taking this extraordinarily seriously.  
5 Department of Justice is working closely with the Department of  
6 Homeland Security to make sure that we remain in compliance.  
7 And if we learned of anything to the contrary, as has been our  
8 pattern in this case, we would immediately alert the plaintiff  
9 states and Your Honor.

10 I would like for Mr. Schwei to briefly address the  
11 compliance options that she raised if that's all right.

12 THE COURT: All right. Is it Schwei?

13 MR. SCHWEI: It is Schwei, Your Honor.

14 THE COURT: All right. I'm sorry. I was saying Schway.

15 MR. SCHWEI: That's all right.

16 With respect to the specific requests for compliance  
17 monitoring, there are a number of reasons why that would be  
18 inappropriate as spelled out in our May 27th filing. But just  
19 briefly, the -- the only basis for the plaintiff's request is  
20 this relatively isolated set of post-injunction cases. There's  
21 no dispute that DHS has taken significant measures in terms of  
22 the big picture to broadly comply with the Court's preliminary  
23 injunction. The circumstances surrounding the post-injunction  
24 three-year terms are unique based on the timing of when the --  
25 for the vast majority at least, they're unique in terms of the

1 timing of when the Court's prelim -- of where those cases were  
2 when the preliminary injunction was issued, and so there's no  
3 basis for thinking that the -- that these circumstances would  
4 recur.

5 And this is not an ongoing program where prospective  
6 oversight might be necessary. The -- Your Honor's injunction  
7 with respect to the 2014 deferred action guidance has halted the  
8 deferred action guidance, and so there's no ongoing issues over  
9 which compliance oversight may be necessary. And the plaintiffs  
10 have the burden of meeting the specific legal standards for  
11 that. For example, appointment of an external master would be  
12 governed by Rule 53 of the Federal Rules of Civil Procedure, and  
13 they have not satisfied the legal standards necessary for that  
14 appointment.

15 THE COURT: Mr. Schwei, let me put -- you know, again,  
16 I'm going to be blunt with you. The more forthcoming and --  
17 that the government is with regard to fixing the problem, the  
18 less likely I am to want a monitor, okay? I mean, that's just  
19 plain old common sense. I understand -- I mean, the  
20 government's like an ocean liner. You can't stop it like you  
21 can a car. I mean, I -- believe me, you know, after a fashion,  
22 we are -- most everybody on this side of the room including me  
23 work for the federal government, okay? We understand it's like  
24 an ocean liner. It's not a car. You can't just slam on the  
25 brake and stop it.



1 But let's fix the problem, and let's work with the states to  
2 get it fixed, and let's get this behind us. That's all I'm  
3 asking.

4 MR. SCHWEI: Absolutely, Your Honor. And I would just  
5 add that with respect to this small -- this one problem, that is  
6 a small problem in terms of the larger compliance with the  
7 preliminary injunction which DHS successfully accomplished.

8 THE COURT: Well, I understand you had -- there were a  
9 lot of bells and whistles that had to go off. And, I mean, you  
10 know, we from this side worked as hard as we could to get what  
11 we got out by the time we got it out given what we thought the  
12 deadline was, and that's the way we operated. And whether we  
13 could have done it faster or slower or more thorough or  
14 whatever, I don't know. I mean, and whether it's affirmed or  
15 reversed, again, I won't know. But we'll find out the same time  
16 probably when we get something on our computer.

17 But let's fix the problem so we don't have to worry about it  
18 in the future because, I mean, let's -- assuming it gets sent  
19 back either on the merits or for some other proceeding, I don't  
20 want to have to deal with anything that even remotely hints of  
21 sanctions. What I want to deal with is the merits or whatever  
22 they send it back for me to do.

23 MR. SCHWEI: Absolutely, Your Honor. And we share that  
24 goal of putting everything to bed. And with respect to these  
25 post-injunction issues, to, you know, seize your Honor's concern

1 about being forthcoming, I think the meet-and-confer process is  
2 the best vehicle for allowing that to happen, and we certainly  
3 wish to be as forthcoming as possible in that meet-and-confer  
4 process.

5 THE COURT: Okay. All right. Ms. Ricketts, anything  
6 else from the government's standpoint?

7 MS. RICKETTS: I can't think of anything, Your Honor.

8 THE COURT: Okay. All right. Y'all meet and confer.  
9 I'll look forward to getting the report at the end of July. I'm  
10 going to cogitate, I guess, on what to do with regard to the  
11 other issue. But let's fix this and let's get it behind us so  
12 we can just talk about law, which is what I think we all would  
13 rather talk about, okay?

14 All right. Thank y'all.

15 *(Court adjourned.)*

16 \* \* \*

17 (End of requested transcript)

18 -oOo-

19 I certify that the foregoing is a correct transcript from  
20 the record of proceedings in the above matter.

21  
22 Date: June 24, 2015  
23  
24

25 /s/\_\_\_\_\_  
Signature of Court Reporter  
Barbara Barnard